

Additions in bold are for DWR

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
AND RAG GULCH WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM CROSS VALLEY DIVISION

THIS CONTRACT, made this ____ day of _____, 2001, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law **and pursuant to the California Central Valley Project Act [Part 3, Division 6 (commencing at Section 11100) of the California Water Code] and the California Water Resources Development Bond Act [Chapter 8, Part 6, Division 6 (commencing at Section 12930) of the California Water Code,] and all acts of the California legislature amendatory thereto or supplementary thereof** between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, **THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA, hereinafter referred to as DWR,** and RAG GULCH WATER DISTRICT, hereinafter referred to as the Contractor, a public agency of the State

of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business in California;

WITNESSETH, That:

EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2nd] WHEREAS, the United States constructed the Central Valley Project, hereinafter collectively referred to as the Project facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[2.2] WHEREAS, as provided herein, Project Water may be made available to the Contractor from the Sacramento-San Joaquin Delta and/or the Friant Division and delivered to the Contractor through appropriate federal, state and/or local facilities; and

[2.3] WHEREAS, DWR is engaged in the operation of the State Water Resources Development System pursuant to the laws of the State of California involving the development, transportation, and delivery of water supplies to public agencies throughout the State of California; and

[2.4] WHEREAS, the Cross Valley Canal, connecting the California Aqueduct and the

Friant-Kern Canal in Kern County, has been constructed by the Contractor and others at no cost to either the United States or DWR; and

[2.5] WHEREAS, the Contractor has the right to use the Cross Valley Canal for conveyance of the Project Water furnished hereunder; and

[3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-8367A, as amended, which established terms for the delivery to the Contractor of Project Water from the Cross Valley Division from February 4, 1976, through February 29, 1996; and

[5th] WHEREAS, the Contractor and the United States have pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s) identified as Contract No(s). 14-06-200-8367A-IR1, IR2, IR3, and IR4, the current of which is hereinafter referred to as the Existing Contract, which provided for the continued water service to the Contractor from December 1, 2000, through February 28, 2001; and

[6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim and existing long-term Project Water service contracts following completion of appropriate environmental documentation, including a programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project Water; and

[7th] WHEREAS, the United States has completed the PEIS and all other appropriate

environmental review necessary to provide for long-term renewal of the Existing Contract; and

[8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the State of California, for water service from the Central Valley Project; and

[9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Existing Contract; and

[10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use and/or has demonstrated projected future demand for water use such that the Contractor has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to this Contract; and

[11th] WHEREAS, water obtained from the Central Valley Project has been relied upon by urban and agricultural areas within California for more than fifty (50) years, and is considered by the Contractor as an essential portion of its water supply; and

[12th] WHEREAS, the economies of regions within the Central Valley Project, including the Contractor's, depend upon the continued availability of water, including water service from the Central Valley Project; and

[13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to pursue measures to improve water supply, water quality, and reliability of the Project for all Project purposes; and

[14th] WHEREAS, the mutual goals of the United States and the Contractor include: to

provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Central Valley Project as required by law; to guard reasonably against Project Water shortages; to achieve a reasonable balance among competing demands for use of Project Water; and to comply with all applicable environmental statutes, all consistent with the legal obligations of the United States relative to the Central Valley Project; and

[14.1] WHEREAS, the United States and the Contractor acknowledge that the Base Supply as defined in this Contract is a more accurate reflection of the amount of water the Contractor may realistically expect in many water Years in light of present constraints, and that designation of Base Supply does not preclude delivery to the Contractor of the Supplemental Supply of Project Water as defined herein; and

[15th] WHEREAS, the parties intend by this Contract to develop a more cooperative relationship in order to achieve their mutual goals; and

[15.2] WHEREAS, the United States and the Contractor desire to contract with DWR for conveyance of Project Water through the facilities of the SWP as aforesaid under an arrangement wherein the United States will furnish the necessary power for pumping such water through DWR's Delta Pumping Plant and Dos Amigos Pumping Plant; and

[15.3] WHEREAS, DWR is willing to convey such water through State Facilities subject to the availability of transportation capacity and payment of costs as herein provided; and

[16th] WHEREAS, the United States, **DWR**, and the Contractor are willing to enter into this long-term renewal contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:

(a) "Base Supply" shall mean that quantity of Project Water so designated in subdivision (a) of Article 3 of this Contract;

(a1) "Calendar Year" shall mean the period January 1 through December 31, both dates inclusive;

(b) "Charges" shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Components specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;

(c) "Condition of Shortage" shall mean a condition respecting the Project during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total;

(d) "Contracting Officer" shall mean the Secretary of the Interior's duly authorized representative acting pursuant to this Contract or applicable Reclamation law or regulation;

(e) "Contract Total" shall mean the total of Base Supply and Supplemental Supply of Project Water to which the Contractor is entitled under subdivision (a) of Article 3 of this Contract;

(f) "Contractor's Service Area" shall mean the area to which the Contractor is

permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto, which may be modified from time to time in accordance with Article 35 of this Contract without amendment of this Contract;

(f2) "Cross Valley Canal" shall mean the water conveyance and related works constructed by the Contractor and others to deliver water from the State Facilities, which canal currently is operated by KCWA;

(g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

(h) “Eligible Lands” shall mean all lands to which Irrigation Water may be delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

(h2) "Entitlement Water" shall mean the amount of SWP Water made available to a SWP Contractor during the respective year, as shown in Table A of their contract with DWR, or as it may be amended;

(i) “Excess Lands” shall mean all lands in excess of the limitations contained in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal Reclamation law;

(j) “Full Cost Rate” shall mean that water rate described in Sections 205(a)(3) or 202(3) of the RRA, whichever is applicable;

(k) “Ineligible Lands” shall mean all lands to which Irrigation Water may not be delivered in accordance with Section 204 of the RRA;

(l) “Irrigation Full Cost Water Rate” shall have the same meaning as “full cost” as that term is used in paragraph (3) of Section 202 of the RRA;

(m) “Irrigation Water” shall mean water made available from the Project that is used primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and watering of livestock;

(m2) "KCWA" shall mean the Kern County Water Agency;

(n) “Landholder” shall mean a party that directly or indirectly owns or leases nonexempt land, as provided in 43 CFR 426.2;

(n2) "Minimum OMP&R Costs" shall mean those OMP&R costs incurred by DWR irrespective of the amount of water delivered to the Contractor;

(o) “Municipal and Industrial (M&I) Water” shall mean water made available from the Project other than Irrigation Water made available to the Contractor. M&I Water shall include water used for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings operated in units of less than five (5) acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a use described in subdivision (m) of this Article;

(p) “M&I Full Cost Water Rate” shall mean the annual rate, which, as determined by the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I facilities in service, including, O&M deficits funded, less payments, over such periods as may be required under Federal Reclamation law with interest accruing from the dates such costs were first

incurred plus the applicable rate for the O&M of such Project facilities. Interest rates used in the calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3) (B) and (C) of the RRA;

(p2) "OMP&R Costs" shall mean the costs incurred by DWR for operation, maintenance, power and replacement of all State Facilities used in conveying Project Water to the Contractor;

(q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable care, control, operation, repair, replacement (other than Capital replacement), and maintenance of Project facilities;

(r) "Operating Non-Federal Entity" shall mean the , a Non-Federal entity which has the obligation to operate and maintain all or a portion of the Project facilities pursuant to an agreement with the United States, and which may have funding obligations with respect thereto;

(r2) "Operations Manual" shall mean the manual setting forth detailed operations and management procedures prepared by DWR, the Contracting Officer and the Contractor;

(s) "Project" shall mean the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;

(t) "Project Contractors" shall mean all parties who have water service contracts for Project Water from the Project with the United States pursuant to Federal Reclamation law;

(u) "Project Water" shall mean all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance

with the terms and conditions of water rights acquired pursuant to California law;

(v) "Rates" shall mean the payments determined annually by the Contracting Officer in accordance with the then current applicable water ratesetting policies for the Project, as described in subdivision (a) of Article 7 of this Contract;

(w) "Recent Historic Average" shall mean the most recent five (5) -year average of the final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding contract(s);

(x) "Secretary" shall mean the Secretary of the Interior, a duly appointed successor, or an authorized representative acting pursuant to any authority of the Secretary and through any agency of the Department of the Interior;

(x2) **"State Facilities" shall mean that portion of the SWP (including DWR's portion of joint facilities), necessary to convey Project Water from the Sacramento-San Joaquin Delta (Delta) to the Cross Valley Canal;**

(x3) **"SWP" shall mean the California State Water Project;**

(x4) **"SWP Contractor" shall mean any entity contracting with DWR for a portion of the minimum project yield of the SWP;**

(x5) **"SWP Water" shall mean water made available through SWP operations including conservation, purchase, and diversion under water rights of DWR;**

(x6) "Supplemental Supply" shall mean that quantity of Project Water so designated in subdivision (a) of Article 3 of this Contract as that portion of the Contract Total that is in addition to and less reliable than the Base Supply;

(y) "Tiered Pricing Component" shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

(z2) **"Variable OM&R Costs" shall mean those costs incurred by DWR for operation, maintenance and replacement costs of State Facilities which are dependant upon and vary with the amount of water delivered; and**

(z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

(aa) "Water Made Available" shall mean the estimated amount of Project Water that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

(bb) "Water Scheduled" shall mean Project Water made available to the Contractor for which times and quantities for delivery have been established by the Contractor and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

(cc) "Year" shall mean the period from and including March 1 of each Calendar Year through the last day of February of the following Calendar Year.

TERM OF CONTRACT

2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In the event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall submit a request for renewal in writing to the Contracting Officer no later than two (2) years prior to the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article, and the

renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

(b) (1) Under terms and conditions of a renewal contract that are mutually agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the Contractor, shall be renewed for a period of twenty-five (25) years.

(2) The conditions which must be met for this Contract to be renewed are:

(i) the Contractor has prepared a water conservation plan that has been determined by the Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all water measuring devices and implementing all water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and, based on projected demands, is reasonably anticipated and expects fully to utilize for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal ability to deliver Project Water.

(3) The terms and conditions of the renewal contract described in

subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent with the parties' respective legal rights and obligations, and in consideration of all relevant facts and circumstances, as those circumstances exist at the time of renewal, including, without limitation, the Contractor's need for continued delivery of Project Water; environmental conditions affected by implementation of the Contract to be renewed, and specifically changes in those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

(c) This Contract, insofar as it pertains to the furnishing of M&I Water to the Contractor, shall be renewed for a period of twenty five (25) years and thereafter shall be renewed for successive periods of up to forty (40) years each, which periods shall be consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and consistent with Federal and State law. The present Reclamation-wide policy, dated March 20, 2000, provides that the term of such contracts shall be no more than twenty five (25) years each, subject to a variance to allow a longer term in appropriate circumstances. The Contractor shall be afforded the opportunity to comment to the Contracting Officer on the proposed adoption and application of any revised Reclamation-wide policy applicable to the delivery of Project M&I Water that would limit the term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than twenty five (25) years.

(d) The Contracting Officer anticipates that by December 31, 2024, all authorized project construction expected to occur will have occurred, and on that basis the Contracting Officer

277 agrees by that date to allocate all costs that are properly assignable to the Contractor, and agrees
278 further that, at any time after such allocation is made, and subject to satisfaction of the condition set
279 out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract
280 under subsection (d) , Section 9 of the Reclamation Project Act of 1939, subject to applicable Federal
281 law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting
282 Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer
283 that, account being taken of the amount credited to return by the Contractor as provided for under
284 Reclamation law, the remaining amount of construction costs assignable for ultimate return by the
285 Contractor can probably be repaid to the United States within the term of a contract under said
286 subsection (d). If the remaining amount of costs that are properly assignable to the Contractor cannot
287 be determined by December 31, 2024, the Contracting Officer shall notify the Contractor, and provide
288 the reason(s) why such a determination could not be made. Further, the Contracting Officer shall
289 make such a determination as soon thereafter as possible so as to permit, upon request of the
290 Contractor and satisfaction of the condition set out above, conversion to a contract under said
291 subsection (d). In the event such determination of costs has not been made at a time which allows
292 conversion of this Contract during the term of this Contract or the Contractor has not requested
293 conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal
294 contract as described in subdivision (b) of this Article a provision that carries forth in substantially
295 identical terms the provisions of this subdivision. In the event the Contracting Officer is able to make
296 a determination of the remaining amount of costs that are properly assignable to the Contractor before
297 December 31, 2024, the Contracting Officer shall do so at the earliest time the Contracting Officer

has such ability.

(e) DWR shall negotiate in good faith with the Contractor and the United States in the process described in this Article: Provided, That no such renewal contract shall obligate DWR to provide conveyance and/or storage beyond February 28, 2035 without further negotiations. The parties acknowledge that operation of State Facilities is not, and shall not be, subject to federal Reclamation law.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available in the Delta for delivery to the Contractor 9,310 acre-feet designated Base Supply and 3,990 acre-feet designated Supplemental Supply water for a Contract Total of 13,300 acre-feet of the Project Water for irrigation and M&I purposes. To reflect changes in reliability, the quantity of Base Supply and Supplemental Supply will be reassessed at least every five (5) years and may be adjusted upon mutual agreement of the parties. Cross Valley Division Contractors shall have a primary priority to pumping capacity made available by the SWP for CVP purposes up to the allocation made for CVP irrigation contractors south of the Delta. Allocations of water supply to Cross Valley Division Contractors and any additional pumping capacity made available by SWP for Cross Valley Division Contractors purposes shall be addressed in the Operations Manual. The quantity of Water Delivered to the Contractor in accordance with this subdivision shall be scheduled, conveyed, and paid for pursuant to the provisions of this Contract, **attached exhibits and the Operations Manual (including any subsequent modifications thereto).**

(b) Because the capacity of the Central Valley Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the full amount of the Contract Total set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's most recent modeling referenced in the PEIS projected that the full amount of the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five (5) years, the Recent Historic Average of Water Made Available to the Contractor was 9,842 acre-feet. Nothing in this subdivision shall affect the rights and obligations of the parties under any provision of this Contract.

(c) The Contractor shall utilize the Project Water in accordance with all applicable legal requirements.

(d) The Contractor shall make reasonable and beneficial use of all Project Water or other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Reclamation law. Groundwater recharge programs,

groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within the Contractor's legal authority to implement. The Contractor shall comply with the limitations or requirements imposed by environmental documentation applicable to the Contractor and within its legal authority to implement regarding specific activities, including conversion of Irrigation Water to M&I Water. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

(f) Following the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. If the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor, the

Contracting Officer will announce the availability of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of taking such water to determine the most equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies. If the Contracting Officer determines that there is an unusually large water supply not otherwise storable for Project purposes or infrequent and otherwise unmanaged flood flows of short duration from the Friant Division, then Friant Division Project Water may be made available to the Contractor as Section 215 Water if the Contractor enters into a temporary contract, not to exceed one (1) year, with the United States for the delivery of such water or, as otherwise provided for in Federal Reclamation law and associated regulations: Provided, That such water shall be first made available to the original twenty-eight (28) long-term Friant Division contractors. Water in addition to the quantities provided for in this contract made available to the Contractor by the Contracting Officer shall be scheduled, conveyed and/or stored by DWR only to the extent that DWR has provided separate approval to do so.

(g) The Contractor may request permission to reschedule for use during the subsequent Year some or all of the Water Made Available to the Contractor during the current Year referred to as “carryover.” The Contractor may request permission to use during the current Year a quantity of Project Water which may be made available by the United States to the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

(h) The Contractor's right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal contracts.

(i) Project Water furnished to the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this Contract upon written approval by the Contracting Officer in accordance with the terms and conditions of such approval.

(j) The Contracting Officer shall make reasonable efforts to protect the water rights necessary for the Project and to provide the water available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, however, That the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding.

(k) Conveyance and/or storage of Project Water by DWR shall be subject to capacity available in State Facilities in excess of capacity determined by DWR to be needed for all SWP operations or any services to long-term SWP Contractors. Conveyance and/or storage for the Contractor may be curtailed prior or subsequent to approval of the Contractor's

403 **schedule under Article 4 of this Contract, in the event it interferes with the delivery of water to**
404 **SWP Contractors or other SWP operations necessary to meet long-term obligations of the**
405 **SWP, including delivery of water to SWP storage or reregulation of stored water for delivery to**
406 **SWP Contractors.**

407 **(l) If in any Year after DWR and the Contracting Officer have approved a**
408 **schedule or any revision thereof submitted in accordance within subdivision (a) and (b) of**
409 **Article 4 of this Contract, and if the Contracting Officer and/or DWR are unable to make**
410 **water available in the quantities and at the times requested in the schedule and the Contractor**
411 **does not elect to receive and does not receive such water at other times during such Year, then**
412 **the Contractor shall be entitled to an adjustments for overpayment as provided in subdivision**
413 **(c) of Article 7, Subdivision (d) of Article 8.1, and Article 10 of this Contract.**

414 **TIME FOR DELIVERY OF WATER**

415 **(4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall**
416 **announce the Contracting Officer's expected declaration of the Water Made Available. The**
417 **declaration will be updated monthly, and more frequently if necessary, based on then-current**
418 **operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made**
419 **Available will be made. The Contracting Officer shall provide forecasts of Project operations and the**
420 **basis of the estimate, with relevant supporting information, upon the written request of the**
421 **Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer**
422 **shall provide the Contractor with the updated Recent Historic Average. The declaration of Project**
423 **operations will be expressed in terms of both Water Made Available and the Recent Historic**

Average.

(b) On or before each March 1 and at such other times as necessary, the Contractor, **after approval of KCWA on behalf of the Contractor, shall submit to DWR and the Contracting Officer a written schedule, satisfactory to the Contracting Officer and consistent with the criteria specified in the Operations Manual. The written schedule shall** show the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the United States **and DWR** shall deliver Project Water to the Contractor in accordance with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

(e) **Scheduling and delivery of Project Water to the Contractor shall be in accordance with detailed procedures set forth in the Operations Manual as it may be amended from time to time.**

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

445 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
446 Contract shall be delivered to the Contractor at a point or points of delivery either on Project **and/or**
447 **State** facilities or another location or locations mutually agreed to in writing by the Contracting
448 Officer, **DWR**, and the Contractor. **The parties acknowledge that Project Water to be furnished**
449 **to the Contractor pursuant to this Contract shall be conveyed by DWR and delivered to the**
450 **Contractor by direct delivery via the Cross Valley Canal and/or by exchange arrangements**
451 **involving Arvin-Edison Water Storage District or others. The parties further acknowledge**
452 **that such exchange arrangements are not transfers subject to Section 3405(a) of CVPIA.**
453 **Notwithstanding Article 9 of this Contract, such exchange arrangements, other than the**
454 **previously approved exchange arrangements with Arvin-Edison Water Storage District, shall**
455 **be submitted to the Contracting Officer for approval in accordance with the same criteria**
456 **historically applied by the Contracting Officer or with the then existing Project-wide criteria.**
457 **DWR shall have no obligation to make such exchange arrangements or be responsible for water**
458 **transported in facilities that are not a part of the SWP.**

459 (b) Omitted.

460 (b2) When Project Water is made available by the Contracting Officer at
461 **Clifton Court Forebay, DWR shall provide to the Contractor, subject to the availability of**
462 **capacity as determined by DWR, conveyance from the Delta and storage in DWR's share of**
463 **storage at San Luis Reservoir, if necessary, of such Project Water consistent with the following**
464 **provisions and the Operations Manual;**

465 (1) The Contracting Officer shall deliver or cause to be delivered into

the DWR's Clifton Court Forebay, Project Water in such quantities and of such quality as shall be sufficient to perform the Contracting Officer's and DWR's obligation to furnish water to the Contractor as set forth in this contract. Such deliveries into Clifton Court Forebay shall be made at such times and rates of flow as the Contracting Officer and DWR shall agree.

(2) DWR, in accordance with an approved Project Water delivery schedule, shall convey the amount of water delivered into DWR's Clifton Court Forebay by the Contracting Officer directly: (i) to the Cross Valley Canal turnout in Reach 12E of the California Aqueduct or to other points of diversion mutually agreed to in writing by DWR and the Contractor, or (ii) to DWR or federal share of storage in San Luis Reservoir for later release and delivery to the Contractor or (iii) to replace water delivered to the Contractor from DWR's share of San Luis Reservoir prior to DWR receiving Project Water from the Contracting Officer, to the extent DWR determines that capacity (and water in the event of an exchange) is available for such conveyance, storage, or exchange (if any). Such deliveries of Project Water shall be required to be made in a manner which will not increase the cost of or adversely affect SWP operations and the quantity or quality of water deliveries to SWP Contractors.

(3) If DWR delivers water to the Contractor from DWR's share of storage in San Luis Reservoir prior to the Contracting Officer providing Project Water at DWR's Clifton Court Forebay, the United States shall return a like amount of water to DWR pursuant to the procedures set forth in the Operations Manual.

(4) The total amount of Project Water delivered at Clifton Court

487 **Forebay to DWR by the Contracting Officer shall include water to compensate DWR for water**
488 **conveyance and storage losses incurred in the delivery of Project Water to the Contractor. The**
489 **amount of such conveyance and storage losses will be determined pursuant to procedures set**
490 **forth in the Operations Manual.**

491 **(5) Project Water received by DWR at Clifton Court Forebay for**
492 **conveyance and/or storage for delivery to the Contractor will be commingled with waters of**
493 **DWR which are pumped through facilities of the California Aqueduct and with other waters of**
494 **both the United States and DWR in the joint use facilities of the San Luis Unit.**

495 **(6) Priorities for use of DWR's share of storage at San Luis Reservoir**
496 **for storage of Project Water shall be subject to all DWR obligations to the SWP operations and**
497 **SWP Contractors and to the criteria specified in the Operations Manual.**

498 **(7) Subject to the necessary arrangements, the Contracting Officer**
499 **shall transmit or cause to be transmitted, by exchange or otherwise, such quantities of power as**
500 **shall be required by DWR to pump through its Delta Pumping Plant and its share of Dos**
501 **Amigos Pumping Plant, the quantities of Project Water transported into Clifton Court**
502 **Forebay pursuant to (1) of this subdivision.**

503 **(8) DWR shall furnish the Contracting Officer with such information**
504 **as the Contracting Officer and DWR agree is needed regarding the timing and quantities of**
505 **power required by DWR to pump Project Water. Such information shall be exchanged**
506 **between the Contracting Officer and DWR in accordance with provisions set forth in the**
507 **Operations Manual.**

(9) The Contracting Officer and DWR may, under terms and conditions satisfactory to both, and in accordance with applicable law, exchange water and/or power necessary for delivery of Project Water to the Contractor under terms of this contract. Such exchange shall be in accordance with the provisions set forth in the Operations Manual.

(b3) To the extent that Friant Division Project Water exceeds Friant Division Contract demand and other Project purposes, as determined by the Contracting Officer, and if the Contractor so requests, the Contracting Officer, subject to subdivision (d) of Article 3 of this Contract, shall make Project Water provided for in subdivision (a) of Article 3 of this Contract available from such Friant Division supplies.

(b4) Project Water may be provided by the Contracting Officer to the Contractor, at the Contractor's request, through federal Delta diversion and conveyance facilities and/or stored in the federal share of storage at San Luis Reservoir for reregulation for later delivery to the Contractor to the extent such diversion, conveyance and/or storage does not diminish the ability of the Project to deliver Project Water to users in the Delta Division, San Luis Unit and San Felipe Division service areas or to meet other legal obligations of the Project.

(c) The Contractor shall deliver Irrigation Water in accordance with any applicable land classification provisions of Federal Reclamation law and the associated regulations. The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless approved in advance by the Contracting Officer.

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the United

529 States, **DWR**, the Operating Non-Federal Entity or other appropriate entity as designated by the
530 Contracting Officer (hereafter “other appropriate entity”) at the point or points of delivery established
531 pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the
532 Contracting Officer **or DWR** shall investigate, or cause to be investigated by the responsible
533 Operating Non-Federal Entity, the accuracy of such measurements and shall take any necessary steps
534 to adjust any errors appearing therein. For any period of time when accurate measurements have not
535 been made, the Contracting Officer shall consult with the Contractor and the responsible Operating
536 Non-Federal Entity prior to making a final determination of the quantity delivered for that period of
537 time.

538 (e) Neither the Contracting Officer, **nor DWR**, nor any Operating Non-Federal
539 Entity shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project
540 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
541 subdivision (a) of this Article. The Contractor shall indemnify the United States, **DWR, and their**
542 officers, employees, agents, and assigns on account of damage or claim of damage of any nature
543 whatsoever for which there is legal responsibility, including property damage, personal injury, or
544 death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of
545 such Project Water beyond such delivery points, except for any damage or claim arising out of: (i)
546 acts or omissions of the Contracting Officer, **DWR**, or any of **their** officers, employees, agents, or
547 assigns, including any responsible Operating Non-Federal Entity, with the intent of creating the
548 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer, **DWR**,
549 or any of **their** officers, employees, agents, or assigns, including any responsible Operating Non-

Federal Entity; (iii) negligence of the Contracting Officer, **DWR**, or any of **their** officers, employees, agents, or assigns including any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United States, **DWR**, or responsible Operating Non-Federal Entity; Provided, That the Contractor is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies) from which the damage claim arose. **In the event any such claim or liability, referenced in this Article or otherwise arising from this Agreement, is made against DWR, its officers or its employees, the Contractor agrees to defend, indemnify and hold each of them harmless from such claim to the extent such claim does not arise from an error or omission of DWR related to the control, carriage, handling, use, disposal, or distribution of Project Water made available to the Contractor by the Contracting Officer.**

MEASUREMENT OF WATER WITHIN THE SERVICE AREA

6. (a) The Contractor has established a measurement program satisfactory to the Contracting Officer, all surface water delivered for irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout and such water delivered for municipal and industrial purposes is measured at each municipal and industrial service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill

water users for water delivered by the Contractor; and, if applicable, to record water delivered for municipal and industrial purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 26.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used to implement subdivision (a) of this Article and identifying the agricultural turnouts and the municipal and industrial service connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of, and necessary modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within sixty (60) days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this

Article.

(c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (a) of this Article.

(d) The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's Service Area during the previous Year.

(e) The Contractor shall inform the Contracting Officer, **DWR**, and the Operating Non-Federal Entity on or before the twentieth (20th) calendar day of each month of the quantity of Irrigation and M&I Water taken during the preceding month.

RATES AND METHOD OF PAYMENT FOR WATER TO THE UNITED STATES

7. (a) The Contractor shall pay the United States as provided in this Article for all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

(b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and Tiered Pricing Components as follows:

(1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such notification shall revise Exhibit "B."

(2) Prior to October 1 of each Calendar Year, the Contracting Officer shall make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project Water for the following Year and the computations and cost allocations upon which those Rates are based. The Contractor shall be allowed not less than two (2) months to review and comment on such computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for the upcoming Year, and such notification shall revise Exhibit "B".

(c) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be

delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the end of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for Water Scheduled and payments at Rates due for Water Delivered shall be made within thirty (30) Days following written confirmation of the quantity of Delivered Water furnished; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last day of February.

(d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the

month of delivery; Provided, That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

(e) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision (a) of this Article.

(f) Payments to be made by the Contractor to the United States under this Contract may be paid from any revenues available to the Contractor.

(g) All revenues received by the United States from the Contractor relating to the delivery of Project Water or the delivery of non-project water through Project facilities shall be allocated and applied in accordance with Federal Reclamation law and the associated rules or

676 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

677 (h) The Contracting Officer shall keep its accounts pertaining to the administration
678 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
679 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
680 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
681 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,
682 and a summary of all water delivery information. The Contracting Officer and the Contractor shall
683 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,
684 reports, or information.

685 (i) The parties acknowledge and agree that the efficient administration of this
686 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
687 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components, and/or
688 for making and allocating payments, other than those set forth in this Article may be in the mutual
689 best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify
690 the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect
691 without amending this Contract.

692 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
693 eighty (80%) percent of the Contract Total, then before the end of the month following the month of
694 delivery the Contractor shall make an additional payment to the United States equal to the applicable
695 Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in
696 excess of eighty (80%) percent of the Contract Total, but less than or equal to ninety (90%) percent of

the Contract Total, shall equal the one-half of the difference between the Rate established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which exceeds ninety (90%) percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.

(2) Subject to the Contracting Officer's written approval, the Contractor may request and receive an exemption from such Tiered Pricing Components for Project Water delivered to produce a crop which the Contracting Officer determines will provide significant and quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced; Provided, That the exemption from the Tiered Pricing Components for Irrigation Water shall apply only if such habitat values can be assured consistent with the purposes of CVPIA through binding agreements executed with or approved by the Contracting Officer prior to use of such water.

(3) For purposes of determining the applicability of the Tiered Pricing Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor transfers to others but shall not include Project Water transferred and delivered to the Contractor.

(k) For the term of this Contract, Rates under the respective ratesetting policies will be established to recover only reimbursable Operation and Maintenance (including any deficits) and capital costs of the Project, as those terms are used in the then-current Project ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy. Changes of significance in practices which

implement the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

(l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy. If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges unadjusted for ability to pay.

(m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer is authorized to adjust determinations of ability to pay every five (5) years.

(n) The Contractor and the Contracting Officer concur that, as of the effective date of this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall have no further liability therefor.

**RATES AND METHOD OF PAYMENT FOR CONVEYANCE
AND OTHER SERVICES BY DWR**

8. (a) To the extent Project Water is conveyed through State Facilities, payment of the costs of conveyance of water through the State Facilities shall be made by the Contractor directly to DWR. The charges and interest rates applicable upon execution of this interim renewal contract are set forth in Exhibit "C" of this Contract. DWR shall invoice the

Contractor monthly for all conveyance charges owing for the previous month. Payment by the Contractor to DWR shall be due thirty (30) days after the date of the invoice. Any payment not received within thirty (30) days after the date of the invoice shall be considered delinquent. Delinquent charges shall be calculated in accordance with Exhibit "C" of this contract: Provided, That no interest shall be charged to or be paid by the Contractor unless such delinquency continues for more than thirty (30) days in total.

(b) DWR shall notify the Contractor of revision to the charges as follows: Prior to October 1, of each Calendar Year, DWR shall notify the Contractor in writing of the charges to be in effect during the following Calendar Year, and such notification shall revise "C" of this Contract At the same time DWR shall provide to the Contractor a copy of the then most recent version of Appendix B of DWR Bulletin 132, which is the basis for calculating the charges to the Contractor to be in effect during that Calendar Year.

(c) DWR shall determine the charge per acre-foot for conveyance of water through the SWP each Calendar Year to revise Exhibit "C" of this Contract as follows:

(1) When DWR provides conveyance directly from the Delta or from the federal share of storage at San Luis Reservoir, the unit conveyance charge shall equal the sum of the following, as determined by DWR: (i) The equivalent unit transportation capital and Minimum OMP&R Costs for Reaches 1 through 12E, excluding Reach 3A, of the California Aqueduct; (ii) The portion of the Delta Water Rate for Reaches 1, 2A, 2B and 3 of the California Aqueduct; (iii) The replacement component of the transportation Variable OM&R Costs for the Harvey O. Banks Delta Pumping Plant and DWR's share of the Dos Amigos

**Pumping Plant; (iv) A charge to offset direct fish losses associated with pumping at the Banks
Pumping Plant, pursuant to the December 30, 1986, agreement between the California
Department of Fish and Game and DWR; and (v) The incremental costs, if any, caused by the
conveyance and delivery of Project Water to the Contractor which, unless included in the
increased charges to the Contractor, would result in increased charges to the SWP Contractors
or increased costs to DWR.**

**(2) When DWR provides conveyance from the States' share of storage
in San Luis Reservoir, the unit charge shall equal the sum of the following as determined by
DWR: (i) The San Luis Facilities portion of the Delta Water Rate; (ii) The net unit energy cost
to replace water in San Luis Reservoir; and (iii) The sum of all unit charges provided under
subdivision (c)(1) of this Article.**

**(d) Should DWR deliver Project Water to San Luis Reservoir on behalf of the
Contractor and it is later determined by DWR that capacity to store such Project Water in
DWR's share of San Luis Reservoir is no longer available because of need for such storage to
meet SWP operations and obligations to SWP Contractors and the Contractor cannot take
delivery of such Project Water, DWR shall relieve the Contractor of its obligations to pay DWR
for all such Project Water so transported, stored, and no longer available to the Contractor.
DWR shall reimburse the Contractor for payments which have previously been made to DWR
for any such conveyed and stored supply, less the administrative charge described in
subdivision (f) of this Article.**

(e) If the Contractor is unable, fails or refuses to accept delivery of Project

Water made available by DWR in accordance with this Contract, such inability, failure or refusal shall not relieve the Contractor of its obligation to pay DWR all associated costs.

(f) The Contractor shall pay DWR a monthly administrative charge specified in Exhibit "C" of this Contract for each month in which DWR conveys Project Water to the Contractor and for each month in which DWR invoices the Contractor for delinquent charges.

SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent compliance with appropriate environmental documentation including but not limited to the National Environmental Policy Act and the Endangered Species Act. Such environmental documentation should include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee. **No sale, transfer or exchange of the right to Project Water under this Contract may take place without the prior written approval of the Contracting Officer and of DWR, if SWP Facilities are used to convey such water.**

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area

and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental documentation including, but not limited to, the National Environmental Policy Act and the Endangered Species Act analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five (5) years and updated, as necessary, prior to the expiration of the then existing five (5) -year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new construction or modifications to facilities and be between existing Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed for

protection of the environment and Indian Trust Assets, as defined under Federal law.

APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at the option of the Contractor, may be credited against amounts to become due to the United States **or DWR** by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the additional costs pursuant to Article 25 of this Contract.

(c) **In the event that the Contractor contests the accuracy of any statement submitted to it by DWR pursuant to this Contract it shall give DWR notice thereof at least ten (10) days prior to the day upon which payment of the stated amount is due. To the extent that**

DWR finds that the Contractor's contentions regarding the statement are correct, it shall revise the statement accordingly, and the Contractor shall make payment of the revised amounts on or before the due date. To the extent that DWR does not find the Contractor's contentions to be correct, or where time is not available for review of such contentions for correctness prior to due date, the Contractor shall make payment of the stated amounts on or before the due date, but may make the contested part of such payment under protest and seek to recover the amount thereof from DWR.

(d) If in any year, by reason of errors in computation or other causes, there is an overpayment or underpayment to DWR by the Contractor of its charges provided for herein, the amount of such overpayment or underpayment shall be credited or debited, as the case may be, to the Contractor's account for the next succeeding Year and DWR shall notify the Contractor thereof in writing.

TEMPORARY REDUCTIONS--RETURN FLOWS

11. (a) Subject to: (i) the authorized purposes and priorities of the Project and State Facilities and the requirements of Federal law and (ii) the obligations of the United States and DWR under existing contracts, or renewals thereof, providing for water deliveries from the Project and State Facilities, the Contracting Officer and DWR shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this Contract.

(b) The Contracting Officer, DWR, or Operating Non-Federal Entity may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of

the Project **or State** Facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer, **DWR**, or Operating Non-Federal Entity will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States **and DWR** shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the United States **and DWR** will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

(c) The United States reserves the right to all seepage and return flow water derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States any right as seepage or return flow being put to reasonable and beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or under the Contractor. For purposes of this subdivision (c), groundwater recharge, groundwater banking and all similar groundwater activities will be deemed to be underground storage.

CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

(b) If there is a Condition of Shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

(c) **DWR shall make all reasonable efforts consistent with sound fiscal policies, and proper operating procedures to maintain the necessary facilities and to deliver Project Water to the Contractor in accordance with the provisions of this contract in such a manner and at such times as such Project Water is scheduled by the Contractor; Provided, That such Project Water has been furnished to DWR by the Contracting Officer; And Provided, further, That in no event shall any liability accrue against DWR or any of its officers, agents or employees for damage, direct or indirect for failure to deliver Project Water to the Contractor on account of errors in operation, drought, or any other cause beyond the control of DWR. Inasmuch as DWR is providing only conveyance and storage services under this agreement, it bears no responsibility for the availability of Project Water for such conveyance.**

(d) **If any of the parties to this Contract are precluded in whole or in part from delivering, conveying or receiving Project Water as a result of uncontrollable forces, all parties shall be relieved from the obligation to the extent they are reasonably unable to complete the obligation due to the uncontrollable force. Uncontrollable force shall include, but is not limited to, earthquakes, fires, tornados, floods and other natural disasters. Each party shall be responsible for payment of any costs incurred on its behalf by the other party(ies)**

before the occurrence of the uncontrollable force.

UNAVOIDABLE GROUNDWATER PERCOLATION

13. To the extent applicable, the Contractor shall not be deemed to have delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

RULES AND REGULATIONS

14. The parties agree that the delivery of Irrigation Water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

WATER AND AIR POLLUTION CONTROL

15. The Contractor, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

QUALITY OF WATER

16. (a) Project **and State** Facilities used to deliver Project Water to the Contractor pursuant to this Contract shall be operated and maintained to enable the United States **and DWR** to deliver Project Water to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States **and DWR** is under no obligation to construct or furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this Contract. The United States **and DWR**

931 does not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

932 (b) The Operation and Maintenance of Project facilities shall be performed in such
933 manner as is practicable to maintain the quality of raw water made available through such facilities at
934 the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall
935 be responsible for compliance with all State and Federal water quality standards applicable to surface
936 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
937 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

938 WATER ACQUIRED BY THE CONTRACTOR
939 OTHER THAN FROM THE UNITED STATES

940 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
941 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
942 be simultaneously transported through the same distribution facilities of the Contractor subject to the
943 following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were
944 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
945 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
946 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
947 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
948 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
949 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
950 necessary to irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that, as
951 of the effective date of this Contract, the Contractor has a distribution system that was constructed
952 without the use of federally finance funds. The use of this distribution system is not subject to the

provisions of this subdivision of this Article. **Prior written approval from DWR must be obtained by the Contractor prior to conveyance of such water in State Facilities.**

(b) **Omitted.**

OPINIONS AND DETERMINATIONS

18. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable under federal law to any opinion or determination implementing a specific provision of federal law embodied in statute or regulation.

(b) The Contracting Officer **and DWR** shall have the right to make determinations necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of the United States and of the State of California, and the rules and regulations promulgated by the Secretary of the Interior **and DWR**. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

COORDINATION AND COOPERATION

19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other

affected Project Contractors, in order to improve the operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision making authority for all actions, opinion, and determinations to be made by the respective party.

(b) Within one-hundred twenty (120) days following the effective date of this Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide process, which may be amended as necessary separate and apart from this Contract. The goal of this process shall be to provide, to the extent practicable, the means of mutual communication and interaction regarding significant decisions concerning Project operation and management on a real-time basis.

(c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

(1) The Contracting Officer will, at the request of the Contractor, assist in the development of integrated resource management plans for the Contractor. Further, the Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water quality, and reliability.

(2) The Secretary will, as appropriate, pursue program and project

implementation and authorization in coordination with Project Contractors to improve the water supply, water quality, and reliability of the Project for all Project purposes.

(3) The Secretary will coordinate with Project Contractors and the State of California to seek improved water resource management.

(4) The Secretary will coordinate actions of agencies within the Department of the Interior that may impact the availability of water for Project purposes.

(5) The Contracting Officer shall periodically, but not less than annually, hold division level meetings to discuss Project operations, division level water management activities, and other issues as appropriate.

(d) Without limiting the contractual obligations of the Contracting Officer hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply with applicable laws.

CHARGES FOR DELINQUENT PAYMENTS

20. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation

Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

EQUAL OPPORTUNITY

21. During the performance of this Contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

22. (a) The obligation of the Contractor to pay the United States **and DWR** as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this Contract. The United States **and DWR** shall not make water available to the Contractor through **CVP or SWP** facilities during any period in which the Contractor may be in arrears in the advance payment of water rates due the United States. The Contractor shall not furnish water made available pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates levied or established by the Contractor.

(c) With respect to subdivision (b) of this Article, the Contractor shall have no obligation to require advance payment for water rates which it levies.

(d) **If in any year the Contractor fails or is unable to raise sufficient funds by other means, the governing body of the Contractor shall levy upon all property within the Contractor's boundary not exempt from taxation, a special assessment sufficient to provide for**

all payments due the United States and DWR under this Contract.

(e) Assessments levied by the governing body of the Contractor pursuant to subdivision (b) of this Article shall be enforced and collected by all officers of the Contractor charged with the duty of enforcing and collecting assessments levied by the Contractor.

(f) All money collected by way of special assessments under this Article for payments due DWR shall be kept in a separate fund by the treasurer or other officer of the Contractor charged with the safekeeping and disbursement of funds of the Contractor, and, upon the written demand of DWR, the treasurer or other officer shall pay over to DWR all money in his possession or control then due DWR under this contract, which money shall be applied by DWR to the satisfaction of the amount due under this Contract.

(g) In the event of failure, neglect, or refusal of any officer of the Contractor to levy any assessment necessary to provide payment by the Contractor under this Contract, to enforce or to collect the assessment, or to pay over to the United States or DWR any money then due collected on the assessment, either or both DWR and the United States may take such action in a court of competent jurisdiction as they deem necessary to compel the performance in their proper sequence of all such duties. Action taken pursuant hereto shall not deprive DWR or United States or limit any remedy provided by this Contract or by law for the recovery of money due or which may become due under this Contract.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S.

Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article, and that the United States reserves the right to seek judicial enforcement thereof.

PRIVACY ACT COMPLIANCE

24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting records, required to be submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

(b) With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining the certification and reporting records referenced in (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's certification and reporting records.

(d) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

(e) The Contractor shall forward promptly to the System Manager each proposed

denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill and detailed statement submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the United States for work requested by the Contractor associated with this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in writing in advance by the Contractor. This Article shall not apply to costs for routine contract administration.

WATER CONSERVATION

26. (a) Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's

continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.

(b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued by the California Urban Water Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

(c) The Contractor shall submit to the Contracting Officer a report on the status of its implementation of the water conservation plan on the reporting dates specified in the then existing conservation and efficiency criteria established under Federal law.

(d) At five (5) -year intervals, the Contractor shall revise its water conservation plan to reflect the then current conservation and efficiency criteria for evaluating water conservation plans established under Federal law and submit such revised water management plan to the Contracting Officer for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets Reclamation's then current conservation and efficiency criteria for

evaluating water conservation plans established under Federal law.

(e) If the Contractor is engaged in direct groundwater recharge, such activity shall be described in the Contractor's water conservation plan.

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or has available under any other contract pursuant to Federal Reclamation law.

OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

28. (a) The Operation and Maintenance of a portion of the Project facilities which serve the Contractor, and responsibility for funding a portion of the costs of such Operation and Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

(b) The Contracting Officer has previously notified the Contractor in writing that the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under

the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets, or establishes for the Operation and Maintenance of the portion of the Project facilities operated and maintained by the Operating Non-Federal Entity or such successor. Such direct payments to the Operating Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the separate agreement identified in subdivision (a) of this Article.

(c) For so long as the Operation and Maintenance of any portion of the Project facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract representing the cost associated with the activity being performed by the Operating Non-Federal Entity or its successor.

(d) In the event the Operation and Maintenance of the Project facilities operated and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project Water under this Contract representing the Operation and Maintenance costs of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in

the absence of written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

29. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

BOOKS, RECORDS, AND REPORTS

30. (a) The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

(b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records, or other information shall be requested from the Contractor by the Contracting Officer unless such books, records, or information are reasonably related to the administration or performance of this Contract. Any such request shall allow the Contractor a reasonable period of time within which to provide the requested books, records, or information.

(c) At such time as the Contractor provides information to the Contracting Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the Operating Non-Federal Entity.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

31. (a) The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

(b) The assignment of any right or interest in this Contract by a party shall not interfere with the rights or obligations of the other parties to this Contract absent the written concurrence of said other parties.

(c) The Contracting Officer shall not unreasonably condition or withhold approval of any proposed assignment.

(d) No assignment or transfer of any rights to use State Facilities authorized by this Contract shall be valid without advance written approval by DWR.

SEVERABILITY

32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time

periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

RESOLUTION OF DISPUTES

33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such action; Provided, That such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor or the United States may have.

OFFICIALS NOT TO BENEFIT

34. No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR'S SERVICE AREA

35. (a) While this Contract is in effect, no change may be made in the Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

(b) Within thirty (30) days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

FEDERAL LAWS

36. By entering into this Contract, the Contractor does not waive its rights to contest the validity or application in connection with the performance of the terms and conditions of this Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this Contract unless and until relief from application of such Federal law or regulation to the implementing provision of the Contract is granted by a court of competent jurisdiction.

NOTICES

37. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given; mailed, postage prepaid; or delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721; **to the Chief, State Projects Analysis Office, Department of Water Resources, P.O. Box 942836, Sacramento, California**

94236-0001; and to the Board of Directors of the Rag Gulch Water District, 1820 - 21st Street, Bakersfield, California 93301. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

CONFIRMATION OF CONTRACT

38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Regional Director, Mid-Pacific Region
Bureau of Reclamation

Approved as to Legal Form and
Sufficiency:

THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF CALIFORNIA

By: _____
Chief Counsel,
Department of Water Resources

By: _____
Director,
Department of Water Resources

(SEAL)

RAG GULCH WATER DISTRICT

By: _____
President of the Board of Directors

Attest:

By: _____

Secretary of the Board of Directors

Contract No.14-06-200-8367A-LTR1

EXHIBIT A

[Map or Description of Service Area]

Contract No.14-06-200-8367A-LTR1

EXHIBIT B
[Initial Rates and Charges]

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